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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROHIT CHANDRA

Appeal 2008-004040
Application 10/776,100
Technology Center 2400

Decided:[1] June 24, 2009

Before JAMES D. THOMAS, ST. JOHN COURTENAY III, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 12-27, 38-41, 43, and 48, which are all of the claims remaining in this application. Claims 1-11, 28-37, 42, and 44-47 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Invention

Appellant's invention relates to search technology. The invention more particularly relates to monitoring and analyzing network traffic for use in ranking the search results returned by a search engine. (Spec. Para. [0001]).

Claims 12 and 38 are illustrative:

> 12. A search system for ranking Internet search results based upon popularity of web pages on a network, the search system comprising:
>
> a plurality of monitoring devices placed in the network, the monitoring devices monitoring packets traversing the network and extracting information on the packets;
>
> a processing module coupled to the monitoring devices and receiving the exacted information from the monitoring devices, the processing module analyzing the extracted information and determining the popularity of the web pages based upon the extracted information, the popularity of the web pages being proportionate to actual number of visits to the web pages as indicated by the extracted information; and

a search engine for receiving search terms and retrieving web pages containing the search terms, the search engine ranking the web pages at least in part based upon the popularity of the retrieved web pages.

38. A method for ranking Internet search results based upon popularity of web pages, the method comprising:

receiving a search term;

performing search of web pages on the Internet based upon the received search term;

retrieving a plurality of web pages containing the search term; and

ranking the web pages at least in part based upon the popularity of the retrieved web pages, the popularity of the retrieved web pages being determined based upon information extracted from packets traversing the Internet and being proportionate to actual number of visits to the web pages as indicated by the extracted information.

THE REFERENCES

Tams	US 6,279,037 B1	Aug. 21, 2001
Pulley	US 2002/0087679 A1	Jul. 4, 2002
Bharat	US 6,526,440 B1	Feb. 25, 2003
Vo	US 2003/0229692 A1	Dec. 11, 2003
McKeeth	US 6,763,362 B2	Jul. 13, 2004
Sehm	US 2005/0021731 A1	Jan. 27, 2005
Matsliach	US 6,879,994 B1	Apr. 12, 2005

THE REJECTIONS

I. Claims 12, 22, 26, 27, 38, 43, and 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams.

II. Claims 13-15 and 39-41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams and Bharat.

III. Claims 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams and Vo.

IV. Claims 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams and Pulley.

V. Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams and Matsliach.

VI. Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams, Matsliach, and Pulley.

VII. Claims 21 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKeeth in view of Tams, Matsliach and Sehm.

APPELLANT'S CONTENTIONS

Appellant contends that the cited references fail to teach the limitation of "determining the popularity of the web pages based upon or as indicated by information extracted from the packets actually traversing the network." (App. Br. 11, emphasis and underlining in original).

ISSUE

Has Appellant shown the Examiner erred in finding that the cited references teach or suggest the limitation of determining the popularity of web pages based upon information extracted from packets traversing the network?

PRINCIPLES OF LAW

Obviousness

"What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007). What a reference teaches is a question of fact. *In re Baird*, 16 F.3d 380, 382 (Fed. Cir. 1994); *In re Beattie*, 974 F.2d 1309, 1311 (Fed. Cir. 1992).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellant's Brief to show error in the proffered prima facie case.

FINDINGS OF FACT

In our analysis *infra*, we rely on the following findings of fact (FF) that are supported by a preponderance of the evidence:

1. McKeeth discloses that determining popularity is based at least in part on the search results generated by the search engine in response to user queries. (Abst. and Col. 7, ll. 41-47).

2. Tams discloses remote probes that forward information on packets being passed over a network segment being monitored. The information is used for monitoring network traffic activity during a specific time interval (col. 1, ll. 6-9; col. 2, ll. 13-16 and 16-21; col. 10, ll. 19-22).

ANALYSIS

As noted above, Appellant contends that the cited references fail to teach the limitation of determining the popularity of the web pages based upon information extracted from packets traversing the network. More particularly, Appellant contends that Tams fails to cure the deficiencies of McKeeth. We agree for the reasons discussed *infra*.

McKeeth discloses determining the popularity of web pages based, at least in part, upon search results generated by the search engine in response to user queries. (FF. 1). In contrast, Tams discloses monitoring devices (i.e., probes) that forward information regarding network packets. (FF. 2). The Examiner relied on Tams to teach monitoring packets traversing the network and extracting information from the monitored packets. (Ans. 4).

Based upon our review of the evidence before us, we find the cited combination of references does not reasonably teach nor fairly suggest determining the popularity of the web pages *based upon the extracted information*, as required by the equivalent language of each independent claim before us on appeal. While the Examiner relies upon Tams to cure the deficiencies of McKeeth, we find Tams uses the extracted information in the

context of monitoring overall network traffic data during a specific time interval (FF 2), instead of using the extracted information to determine the popularity of a web page.

Thus, we agree with Appellant that the Examiner's proffered combination of McKeeth and Tams does not teach or fairly suggest all of the claim limitations, since according to Tams, the information extracted from (or about) the network packets is not used to monitor a particular set of communications directed to a specific destination (e.g., a particular web site) so as to determine frequency of use (i.e., popularity, or number of hits).

We find that a gap exists in the combined teachings because McKeeth's search engine results have no direct nexus or reasonable inference to Tams' teaching of extracting overall information about network traffic data during a specific time interval, where the network packet data is not extracted and examined for a specific destination (*See* FF 2). Therefore, we conclude that the differences between the claimed invention and proffered combination of McKeeth and Tams are too great to reasonably render claim 1 obvious to an artisan not having the benefit of the claimed subject matter.

CONCLUSION

Appellant has shown the Examiner erred in determining that the cited references teach or suggest the limitation of determining the popularity of web pages based upon information extracted from packets traversing the network, as claimed in commensurate language by each of independent claims 12, 38, 43, and 48.

Accordingly, we reverse the Examiner's obviousness rejection of each independent claim on appeal. Because we have reversed the Examiner's rejection of each independent claim on appeal, we also reverse the Examiner's obviousness rejections of the associated dependent claims on appeal.

DECISION

We reverse the Examiner's rejections of claims 12-27, 38-41, 43, and 48 under 35 U.S.C. 103(a).

REVERSED

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